

THE COURT REPORTER

OUR NEW MILLENNIUM ISSUE



Editor: Joel D. Strasser, Esq.

PERSONAL INJURY CLIENT RECEIVES SETTLEMENT OF \$ 1.576 MILLION

INSIDE THIS ISSUE:

*\$1.576 Million
Settlement*

Penalties

Fraud

*Social Security
Disability*

Senate Bill 996

Cynthia Buttram

History of the Firm

1
2
2
3
3
4
4

Our 64-year-old client was involved in an automobile accident on October 31, 1998, when another motorist, driving a commercial pickup truck, ran a stop sign and broad-sided the client's car. She sustained injuries to several parts of her body including skull, pelvis and left arm fractures. She underwent several surgeries and the medical expenses totaled over \$200,000. She has made a very good recovery to date and has been able to resume many of her favorite leisure activities. The case was settled out of Court at Mediation. Mediation is a voluntary process that works well when both sides desire to settle a case to avoid the risk and expense of trial. With the use of state of the art medical illustrations that graphically depicted our client's injuries, partner Robert Mammano persuaded the mediator and the insurance company for the other driver to settle the case for \$1,576,000.

The terms of the agreement included a provision for a structured settlement. Our client chose to receive a substantial immediate cash pay-out of \$495,293 plus \$6,000 per month for the rest of her life and \$10,000 on her birthday for the next six years. Any personal injury settlement may be structured to customize the pay-out schedule to provide for our client's future needs.

IS BEING CHARGED WITH FRAUD ADDING INSULT TO INJURY?

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✧ ANSWERS TO QUESTIONS ✧
PENALTIES FOR UNTIMELY PAYMENT OF MEDICAL EXPENSES

**How Can I Receive Workers' Compensation Penalties
for my Employer's Untimely Reimbursement of Medical Treatment?**

Laurence R. Lerner

If payment or reimbursement of medical expenses or mileage are not made to the injured worker on a timely basis, the law provides for a 10% penalty against the insurance company for the delay in payment. Until recently, however, the courts have not spelled out what is meant by an "unreasonable delay" of payment for these expenses.

In the recent case of Avalon Bay, the California Court of Appeals indicated that a delay of more than sixty (60) days would be considered unreasonable and subject to a 10% penalty. In other recent court decisions, the 10% penalty was applied not only to the medical expenses which were not paid on a timely basis, but to the entire amount of medical benefits paid to date and to be paid in the future.

I recently secured over \$30,000 in penalties for a client, whose medical bills were not timely paid on two occasions. Penalties were paid twice on the entire amount of medical expenses to date, not just the delayed amount. This means that the insurance company's untimely payment of a small amount of medical expenses could lead to a large penalty.



Workers' Compensation Fraud

Francisco Silva

In July 1993, the California State Legislature passed urgency legislation to ease the increasingly burdened Workers' Compensation industry, which, in part, provides for penalties for making a false or fraudulent written or oral statement. Section 1871.4 of the California Insurance Code provides for penalties against anyone who makes a knowingly false statement to obtain or to deny Workers' Compensation benefits and reliance on the statement could affect benefits. This legislation was intended to provide relief to employers, who felt they were being forced to pay benefits to individuals, who made claims for Workers' Compensation benefits, but were not, in fact, injured on the job.

The new law, however, not only targets fraudulent individuals, but those with legitimate claims who, in fact, have been injured on the job, but forgot to tell their treating or evaluating physician about previous injuries or prior medical treatment for similar conditions. Increasingly, injured workers are being charged with fraud, because of an incomplete medical history.

Depositions, statements taken under oath for fact finding purposes, become a basis for a fraud or perjury prosecution, if the witness (usually the injured worker) denies having treatment documented by the medical records. Routinely, the employer, or the insurance carrier, will obtain all of the injured worker's past medical records and ask about them during the deposition. Inaccurate statements about past treatment, which may have been forgotten, are now being reviewed by employers and the District Attorney's office. Videotaping injured workers in the performance of their daily activities has increased as employers and insurance companies attempt to reveal inconsistencies at deposition or trial.

To avoid forfeiture of benefits and criminal prosecution, the injured worker must be truthful about prior illnesses or injuries, even if he/she believes it will not affect benefits. Accuracy in the description of daily activities is of equal importance.

In short, always tell the truth, tell the truth, tell the truth.

HAS THE SOCIAL SECURITY ADMINISTRATION DENIED YOUR DISABILITY CLAIM?

WHAT IS THE SOCIAL SECURITY DISABILITY PROGRAM?

Our firm is a member of "NOSSCR" (the National Organization of Social Security Claims Representatives). We have successfully represented thousands of clients before the Social Security Administration.

The Social Security Disability Program provides benefits to disabled persons who qualify, usually by having worked five out the last ten years, before becoming disabled. It is important that you understand how Social Security defines "disability". That is because different programs have different standards for determining disability. Some programs may pay for partial disability or for short-term disability. Social Security does not provide any benefits for partial or short-term disabilities.

Disability under Social Security is based on your inability to work. You will be considered disabled if you are unable to do any kind of work and your condition, which caused your disability, has lasted, or is expected to last, at least one year or end in death. This is a very strict definition of disability. The program assumes, many times incorrectly, that working families have access to other resources to provide support during short-term disabilities, e.g., workers' compensation, disability insurance, savings and investments. If you qualify, benefits continue as long as you remain disabled.

If you believe you qualify, you should apply at a Social Security office. Most claims are denied, after which you have 60 days to file an appeal ("reconsideration"). If you are denied again, you should contact us for representation as your chances of prevailing are much higher with an attorney, who can effectively cross-examine any medical or vocation expert and present the necessary evidence to the administrative law judge deciding your case. Our fee is no more than 25% of any retroactive benefits we secure. You are responsible for the cost of copying your Social Security file and medical records or obtaining reports from your doctor.



GOVERNOR IGNORES MORE THAN ONE MILLION INJURED CALIFORNIA WORKERS

For the second year in a row, Governor Davis vetoed legislation which would have increased Workers' Compensation benefits for injured workers in California. Senate Bill 996 would have raised the maximum cap on weekly benefits for temporarily disabled workers from \$490 to \$651 and for permanently disabled workers from \$140 to \$230.

California ranks 49th out of 50 states in its level of benefits for most injured workers, according to the U.S. Department of Labor. The maximum weekly benefit of \$140 for more than half of permanently disabled workers has not increased for 18 years. Death benefits were not lifted from \$125,000 to \$165,000 for a widow or widower with two dependents due to the veto.

Voice your disagreement with the Governor's veto!

Write:

Governor Gray Davis

State Capital

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CYNTHIA BUTTRAM ~ OFFICE MANAGER ~

An office is only as strong as its support staff, and our office manager, Cynthia O'Campo Buttram (Cindy), is the backbone of Lerner, Moore, Mammano, Strasser & Silva. Cindy began her career sixteen years ago when she was hired by Laurence R. Lerner as his secretary. Cindy's extraordinary competency, talents and bilingual proficiency soon elevated her to the position of office manager, where she has served for over eleven years. Cindy willingly helps our clients, supervises a staff of twenty, assists the attorneys and skillfully takes care of myriad problems that arise in administering a busy office.

Cindy was born and raised in San Bernardino and is close to her parents and her five brothers and sisters. She and her husband of twenty-two years, David Buttram, have been very involved with community service. Cindy has served as a Commissioner on the Animal Advisory Board for the City of San Bernardino; as president of the Knights' Ladies (#905); is a member of the Inland Empire Advisory Council, which provides information to small businesses; a member of the San Bernardino Chamber of Commerce; a member of the Court of Our Lady of Peace (# 1306); a member of the auxiliary of the Catholic Daughters; and, was a member of the San Bernardino Secretaries Legal Association.

Further, Cindy is very creative and has a flair with arts and crafts. She uses this talent in her home, as well as the office. All holiday decorations you enjoy in our office are the result of Cindy's whimsical, fun style. As if Cindy were not busy enough, she is currently attending school with a goal to complete her Bachelor of Science Degree in Business Administration. Her years as office manager give her valuable hands-on experience toward her degree.

It is with great appreciation and thanks that we spotlight Cindy Buttram for her many years of loyalty and dedication to the firm and to our clients.



HISTORY OF THE FIRM

Lerner, Moore, Mammano, Strasser & Silva (LMMS&S), a professional law corporation, is one of the largest and oldest firms with a continuous practice in the Inland Empire specializing in the fields of Workers' Compensation, Social Security Disability, and Personal Injury. The founder and senior partner of the firm, Laurence Lerner, has championed the causes of injured workers for over a quarter of a century. He was elected president of the California Applicants' Attorneys Association from 1996-97 and serves on its Board of Governors.

The firm has been an integral part of the Inland Empire and the High Desert communities. Mr. Lerner and the firm have been prominently involved in community, civic, and philanthropic projects.

Any individual who needs help with a Workers' Compensation claim, has been denied Social Security Disability benefits, or has a personal injury case, may call for a free consultation. The staff speaks English and Spanish and is always ready to assist new clients.

